IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

CRP.No. 2071 of 1992(G)
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CC.1196/KTD/06 of TALUK LAND BOARD, KUTTANAD
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REVN. PETITIONER:
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State of Kerala.

BY GOVERNMENT PLEADER SMT. R.BINDU

RESPONDENTS:
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1. Thomas Joseph, Mozhacheril Kunnamkary, Veliyanadu, represented by Advocate Sri. P.M.Alexander.

2. Sri. Joseph Ouseph, Maliakal Bungalow, Thattassery, Kottayam.

3. Smt. Elcie, Valiaparambu, Vadakkumbhagom, Kumarakom.

4. Sri. Joseph Baby, Maliakal, Kottayam.

5. Sri. Lukose Stephen, Parayil, Thattassery, Kottayam.

6. Sri.Mathew Idiculla, Vattapurayidathil, Mundupuzha, Ranny.

7. Smt. Joseph Saramma, Parayil, Thassassery, Kottayam.

8. Sri.Joseph Thankamma,Mullampallil,Vijayapuyram, Kottayam.

9. Sri. Joseph Philip of do. do.

10. Sri.Joseph Sujith, Mozhacherry, Veliyanad.

11. Sri. Joseph Lalu, Parayil, Thattassery, Kottayam.

12. Smt. Joseph Scaria, Mozhacherry, Veliyanad.

13. Sri. Chacko Thomas, Pillaveettil, Kidangur, Meenachil.

14. Sri. Thommy Oommen, Thuruthunalil, Kidangur.

15. Sri. Joseph Stephen, Maliakal, Thattassery, Kottayam.

16. Sri. Chacko Mathai, Mannoothara, Veliyanad.

17. Sri. Punnoose Mariamma, Puthenkalathil, Veliyanad.

18. Sri. Ouseph Mathai, Kottarakalthil, Kumaramkary, Veliyanad.

19. Sri. Kunappi Narayanan, Kunnapadasseril of do.

20. Sri.Kunnappi Vasu, Kunnapadasseril of do.

21. Sri. Kuriakose Ouseph, Kannankarasseril, Kunnamkary, Veliyanad.

22. Sri. Kuriakose Varghese of do.

23. Augusthy Iyyo Padinjarekkottu, Kumaramkary of do.

24. Chandi Joseph, Cherukkad House, Chennamkary, Kainakari.

25. Ouseph Scaria, Puthenpurackal, Kidangara Muri, Veliyanad.

26. Scaria Theesiamma, Puthenpurackal, Kidangara Muri, Veliyanad.

27. Chacko Mathew, Thottumkal House, Kunnamkari Muri, Veliyanad.

28. Chocko Chacko (father) Attumalil House, do.

29. Chacko, Thankamma do. do.

30. Chacko Chacko (son) do. do.

31. Chacko Joy of do. do.

32. Thommi George, Vakkicheril, Kunnumma, Padinjare Muri, Kavalam.

33. Varghese Antony, Paruthiyil, Kunnamkary Muri, Veliyanad.

34. Varghese Thomas of do. do.

35. N. Ramachandran nair, Jay Nivas, Veliyanad.

36. C.R. Sethukumari Amma of do.

37. Padmanabhan Sumathi, Kariparambu, Veliyanad.

38. Radhamony, Kappilchira, Kunnamkary, Veliyanad.

39. Sreedharan Nair, Kalathilparambu of do.

40. Devassia Devassia, Elenjickal, Kumaramkary muri, Veliyanad.

41. Lukose Joseph Parayil, Thattasserikara, vijayapuram Village.

42. Abraham Uthuppan, Kuripparambil, Veliyanad muri, Veliyanad.

43. Ahcamma Scaria, Kappil Veedu, Kunnamkary muri, Veliyad.

44. Chacko Joseph, Kappil Veedu, do.

Legal heirs of deceased 17th respondent:

Addl.45. Dr. P.Kurian, Minivilla, Jayalakshmipuram, Mysore 12

Addl.46. Achankunju Punnoose, Puthenkulam, Palavayal P.O., Payyannur.

Addl.47.Dr.Baby Ponnoose, Puthenkulam, Pala.

Addl.48. P.P.Joseph, Near Puthenkulam Govt. U.P. School, Karakkulam, P.O. Thiruvananthapuram.

Addl.49. Rev. Father Abraham P.P., Puthenkulam, Veliyanad P.O.

Legal heirs of deceased respondent No.25:

Addl.50.Thresiamma Scaria, W/o. late Ouseph Scaria, Puthen Purekkal, Kidangara.

Addl.51.Joseph Scaria, S/o. Ouseph Scaria, Puthen Purekkel, Kidangara.

Addl.52.Molikutty Scaria, D/o. Ouseph Scaria, Puthen Purekkal, Kidangara.

Legal heirs of deceased respondent No.32:

Addl.53. Joyichen George, V akkisseril, Kunnumma Kizhakke, Kavalam P.O. (Died).

Addl.54. V.T.Thomas, Vakkisseril, Kunnumma Kizhakke, Kavalam P.O., (Family member)

Addl.55. Thressiamma, Marattukalathil, Changassery, Kottayam (Died).

Addl.56. Asheeniya, Asaration Convent, Melkulangara (Sanyasini)

Addl.Respondents 45 to 49 are impleaded as the legal heirs of deceased 17th respondent as per order on CMP 2781/02 dt. 1.12.2007.

Addl.Respondents 50 to 52 are impleaded as the legal heirs of deceased 25th respondent as per order on CMP 2781/02 dt. 1.12.2007.

Addl.Respondents 53 to 56 are impleaded as the legal heirs of deceased respondent No.32 as per order on CMP 2781/02 dt. 1.12.2007.

Addl.57. M.A. Chacko (Son), Marattukalam, I.R. Nagar, Changanasseri.

Addl.58. Kunjukunjamma Mathew (Daughter), Pullukkattu, Madapalli, Changanasseri.

Addl.59. Rosamma Jose (daughter) Chelathadom, Valikyakulam, Kurissummoodu, Changanassery.

Addl.60. Thressikutty Antony (daughter), Kolloor house, Kavilpuram, Pulinkunnu, Alappuzha.

Addl.61. Aniyamma Job (daughter), Vettikattu House, Muttathupadi, Cheeramchira PO, Changanasseri.

Addl.62. Elsamma Mathai (daughter), Kunnathu House, Valiyakulam, Kurissummoodu PO, Changanasseri.

Addl.63. Sibi Antony (son) Valiyakulam, Kurissummoodu PO, Changanasseri.

Addl.Respondents 57 to 63 are impleaded as the legal heirs of deceased respondent No.55 as per order on IA 3192/04 dt. 1.12.2007.

Addl.64. P.T.Chacko, Pillaveettil, S.H.Mount P.O. Kottayam.

Addl.65. Smt. Gracy Joseph, Thekkanadu, Kumaranaloor P.O. Kottayam.

Addl.66. Smt. Kunjukunjamma Joseph, Vellithayil, Kattassery PO, Chengannur.

Addl.Respondentsd 64 to 66 are impleaded as the legal heirs of 13th respondent as per order on IA 3254/06 dt. 1.12.2007.

R1 BY SRI.JOSEPH A.VADAKKEL
SRI.GEORGE H.VARGHESE
R18,R23, R33, R34, R37, R38,R40, R41,R42,R43 & R44 BY ADV. SRI.SIBY MATHEW

R21, R22 BY SRI.O.V.RADHAKRISHNAN (SR.)
R28 to R31 BY SRI.N.MURALEEDHARAN NAIR
R26 BY SRI.S.SANAL KUMAR
R57 BY Adv. SRI.ANTONY C. ETTUKETTIL

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 01/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**M.N.Krishnan, J.**

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**C.R.P.No.2071 of 1992**

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**Dated this the 1st day of December, 2007.**

**ORDER**

This revision petition is preferred against the order of the Taluk Land Board, Kuttanad in Ceiling Case No.1196/KTD/C6. The Taluk Land Board by the impugned order found that the case has to be dropped and it is against that decision, the Government have come up in appeal. The principal contention raised by the learned Government Pleader is to the effect that against a previous order, C.R.P.No.3287 of 1983 was filed by the State of Kerala and this Court by judgment dated 12.3.1991 allowed the Civil Revision Petition with a direction to surrender 14.23 acres of property in addition to what has already been surrendered. Learned Government Pleader would contend that the Land Board cannot sit over in judgment of this Court and pass orders and therefore, the order is vitiated and it is liable to be set aside. I feel that a brief reference to the facts may be necessary in order

to know the things correctly.

2. A perusal of the order would reveal that a ceiling case is initiated against Thomas Joseph, the declarant, his wife and six minor children. As per an order dated 26.9.1977, he was directed to surrender an extent of 123.54 acres of land. Against that C.R.P.Nos.3770 of 1977 and 1654 of 1978 were filed and the orders were set aside and the matter was remanded for fresh determination. Again final orders were passed on 14.11.1982. As per the said order, 102.01 acres of land were excluded and the land to be retained by the family and declared the remaining 18 acres and 40.250 cents of land to be surrendered by the family. On 14.11.1982, 27 persons filed applications under Section 85 (8) of the Kerala Reforms Act (hereinafter referred to as "the Act") and they were added as interested parties and as per the final order dated 14.3.1984 excluding 23 acres and 17.750 cents of land. Thereafter, the Land Board came to the conclusion that the family is only having 15 acres and 9.500 cents of land and as the family can retain 20 acres decided to drop the proceedings.

3. Meanwhile the State of Kerala has preferred

C.R.P.No.3287 of 1983. It was in relation to the legality of the execution of 14.23 acres of land transferred by the declarant to his nephews as per gift deed Nos.2892/69 and 2895/69. This Court in the light of the decision reported in **Ramanantha Reddiar** v. **Taluk Land Board** - 1985 K.L.T. 412 allowed the Civil Revision Petition filed by the Government and directed to surrender 14.23 acres of land. The Taluk Land Board in its revised order would submit that subsequent to the passing of the original order, the applications under Section 85(8) of the Act were allowed and the court found that the declarants were in possession of only lands below the ceiling area and therefore, Section 84 of the Act will not apply and hence held that no land need be surrendered. It is not very clear from the order of the Land Board how they have dealt with this 14.23 acres of land.

4. Since this Court has held that 14.23 acres of land covered by the gift deed is not liable to be excluded, the Land Board has to consider whether as on 1.1.1970 including these lands there was more area than a person is entitled to hold under the Kerala Land Reforms Act and if it is found it is in excess taking into consideration the property held by them will be above

the ceiling area then certainly the Land Board has to take into consideration that for determining the ceiling area of the declarant. It is not very clear from the order how the Land Board has dealt with the said property.

5. Therefore, the matter requires reconsideration and hence I set aside the order of the Land Board and remand the case with the following directions:

(1) The Taluk Land Board shall decide the question as to what is the extent of land possessed by the declarant as on 1.1.1970 including 14.23 acres of land alleged to be gifted in the year 1969.

(2) If after taking into account the same, it is found that the declarant is holding the land in excess of the ceiling area, the Land Board has to pass appropriate orders.

(3) The Taluk Land Board has to take into consideration the lands excluded by this order regarding the lands covered by the claimants under Section 85(8) of the Act. If after deletion of the same if it is found that there is no excess land it may record a finding accordingly.

(4) It is submitted by the counsel for the respondent that

they are entitled to the benefits under Section 7E of Act 21 of 2006. Even if there is invalidation under Section 84 of the Act or so, Section 7E empowers entitlement of certain rights to the persons who had purchased the property, which the Land Board can consider on appropriate applications from the parties after hearing the Government as well. The Taluk Land Board is directed to issue notice of hearing, fix a convenient date and hear all the parties and receive applications it they file under Section 7E of the Amended Act and dispose of the matter in accordance with law.

Civil Revision Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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